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No. 90-622

IN THE
Supreme Court of the United States

October Term, 1990

THE STATE OF FLORIDA,

Petitioner,

vs.

LUZ PIEDAD JIMENO
and
ENIO JIMENO,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITIONER'S BRIEF OF THE MERITS

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QUESTION PRESENTED

DOES THE SCOPE OF A CONSENT SEARCH EXTEND TO ALL AREAS, INCLUDING CLOSED CONTAINERS, WHICH COULD REASONABLY CONCEAL THE OBJECT OF THE SEARCH, WHEN THE CONSENTING INDIVIDUAL IS ADVISED AS TO THE NATURE OF THE INVESTIGATION AND THE OBJECT OF THE SEARCH.

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OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at 564 So.2d 1083 (Fla. 1990). (Pet. App. 1a-3a).

The opinion of the District Court of Appeal of Florida, Third District, is reported at 550 So.2d 1176 (Fla. 3rd DCA, 1989). (Pet. App. 4a-6a).

The trial court's order granting motion of Respondents, Luz Piedad Jimeno and Enio Jimeno, to suppress evidence is not reported. (Pet. App. 7a-11a).

JURISDICTION

The Supreme Court of Florida's opinion was filed on July 26, 1990. This Court has jurisdiction. 28 U.S.C. § 1257(3). On October 15, 1990, Florida filed a petition for writ of certiorari, which this Court granted on December 3, 1990.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment IV, United States Constitution, provides, in pertinent part:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause ...

Amendment XIV, Section 1, United States Constitution provides, in pertinent part:

> ... nor shall any state deprive any person of life, liberty, or property, without due process of law ...

Article I, Section 12, Florida Constitution, provides:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, and against the unreasonable interception of private communications by any means, shall not be violated. No warrant shall be issued except upon probable cause, supported by affidavit, particularly describing the place or places to be searched, the person or persons, thing or things to be seized, the communication to be intercepted, and the nature of

> evidence to be obtained. This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE

Respondents, Luz Piedad Jimeno and Enio Jimeno, were the Respondents in the Supreme Court of Florida. The facts of the case, as set forth in the trial court's order granting the motion to suppress, are as follows:

> On March 2, 1989, the Court heard the defendants' motions to suppress. None of the three defendants were present and counsel agreed to waive their presence.
>
> Based on the testimony of police officer, Frank Trujillo, the Court makes the following findings.
>
> 1. Officer Trujillo first observed the defendant, Enio Jimeno, making a telephone call at a pay phone and consulting his beeper. Because of the conversation he overheard, he became suspicious that Mr. Jimeno was involved in drug trafficking. The officer then followed defendants who went by car to an apartment complex, waited in their car, then drove around, returned to the complex, brought a package into an apartment, took it out and continued driving.
>
> 2. The officer followed the car and stopped Enio Jimeno for making a right turn at a red light without stopping. Luz Jimeno, Enio's wife, was seated in the right front passenger seat and Cesar Tabares was in the back seat.
>
> 3. The traffic stop was valid and could have been made even if the officer had no suspicion of illegal drug trafficking.
>
> 4. After the stop, Enio Jimeno freely consented to the search of the vehicle he was driving, and advised the officer the car was jointly owned by himself and his wife, Luz. Luz, who was present when the search was conducted, did not object to the search.
>
> 5. Officer Trujillo found a closed brown paper bag on the floor of the car on the front passenger side. The bag was rolled up and it was not possible to see the contents without unfolding the bag.
>
> 6. Even though Officer Trujillo advised Enio Jimeno that the reason he wanted to search the vehicle was that he was looking for illegal drugs, and the defendant could have assumed that the officer would have searched the bag, the defendant did not specifically consent to the search of the bag and, i[n] (sic) fact, the officer never requested permission to open the bag and examine the contents.

(Pet. App. 7a-10a).

The trial court in reliance on *State v. Wells,* 539 So.2d 464 (Fla. 1989), *aff'd. on other grounds* 496 U.S. ___, 110 S.Ct. ___, 109 L.Ed.2d 1 (1990), held that the scope of the consent given did not extend to the search and seizure of the bag. The trial court then granted the motion to suppress of Luz Piedad Jimeno and Enio Jimeno. (Pet. App. 10a).

The State appealed this decision to the District Court of Appeal of Florida, Third District. That court affirmed the trial court's suppression of the evidence. The court held that a consent to a search of an area for narcotics does not extend the scope of the consent to a sealed container located within the general area consented to. This holding did not take into account that the container sought to be searched reasonably could have contained the object of the search. The Third District certified to the Supreme Court of Florida, the question of whether the scope of consent extends to a closed

container after consent has been given to search a motor vehicle for narcotics. (Pet. App. 4a-6a).

The Supreme Court of Florida accepted the State's petition for discretionary review based on the certified question. That court approved the decision of the district court and concluded that consent to search the motor vehicle for narcotics was strictly limited to the passenger compartment of the motor vehicle. The scope of the consent did not extend to any containers located within the passenger compartment, regardless of whether the container reasonably could have contained the object of the search, to wit: narcotics. The Supreme Court of Florida relied exclusively on its alternative holding in *State v. Wells,* 539 So.2d 464 (Fla. 1989) *aff'd. on other grounds,* 495 U.S. ___, 110 S.Ct. ___, 109 L.Ed.2d 1 (1990). (Pet. App. 16a-28a).

In *Wells,* the Supreme Court of Florida held that a general consent to open and look into the trunk of an automobile, without informing the occupant of what the police were looking for, was insufficient to authorize the opening of any locked or closed container found in the trunk. The court rejected the State's argument that, pursuant to *United States v. Ross,* 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982), the scope of a consent search extends to every part of the vehicle and its contents that may conceal the object of the search:

> . . . We cannot agree that the state and its agents, by receiving an ill-defined or limited consent to be searched, suddenly are vested with all the authority conferred by a warrant. Such a holding effectively would vitiate the entire theory upon which the consent search rests.

Wells, supra at 467. (Pet. App. 19a-21a).

The dissent found that the majority's interpretation of Ross was overly restrictive and erroneous. While acknowledging that *Ross* would not be authority to exceed the specific scope of a restricted search, the dissent reasoned that the *Ross* analysis is applicable to an unrestricted consent search. (Pet. App. 44a-46a).

SUMMARY OF ARGUMENT

In order to comply with the constitutional mandate of the Fourth Amendment, a valid consent search must in scope be reasonably related to the circumstances which initially authorized the intrusion. To determine if the scope was reasonably related to the consent, the assessment of the facts must be judged against an objective standard. *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

The objective standard of review will allow neutral judicial scrutiny of the governmental action, reviewable in the same manner as warrant or probable cause searches. The consent, just like probable cause, lawfully places the police in a protected area. A specific request to search an area for a specific object, provides the same particularity requirement as that which is necessary in a warrant. Review will be based on the reasonableness of the police conduct and will not be susceptible to the vagaries of the subjective intent of the consenting individual.

In the instant case, the Respondents were advised that they were suspected of transporting illegal drugs in their vehicle. They then gave consent to a search of their vehicle for illegal drugs. The Florida Supreme Court held that such a consent was limited to looking in the passenger compartment and did not extend to the rolled up brown paper bag found on the compartment's floor. This is totally unreasonable. The consent to search for drugs was not given in the abstract. Rather, it was consent to search for drugs and therefore extended to all items that could reasonably contain illegal drugs. Any other interpretation of the scope of the consent would place an oppressive burden on the police when conducting consent searches, since they would never know what is within the scope and what is not.

ARGUMENT

Introduction

It is well settled under the Fourth and Fourteenth Amendments that a search conducted without a warrant issued upon probable cause is "per se unreasonable . . . subject only to a few specifically established and well-delineated exceptions." *Katz v. United States,* 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). It is equally settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search that is conducted pursuant to consent. *Schneckloth v. Bustamonte,* 412 U.S. 218, 219 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). The constitutional question in the present case concerns the scope of a general and unqualified consent.

The Supreme Court of Florida upheld the trial court's suppression of the cocaine found in Respondents' motor vehicle, finding that consent to search the motor vehicle for narcotics did not extend to the closed container found in the vehicle. (Pet. App. 1a). The court relied on its prior decision of *State v. Wells,* 539 So.2d 464 (Fla. 1989), *aff'd on other grounds,* 495 U.S. ___, 110 S.Ct. ___, 109 L.Ed.2d 1 (1990), where, based on a consent to look in a car trunk, the court held that an ill defined or limited consent did not vest the police with all the authority conferred by a warrant. (Pet. App. 11a). The court then applied the foregoing holding and found that Respondents' consent to search their motor vehicle for narcotics did not extend to a closed container found within the passenger compartment of the vehicle. (Pet. App. 1a).

The issue before the Court is whether a general and unqualified consent to search a particular area for a definite object, extends to all containers within the permitted area which might reasonably contain the object of the search.

When such a consent is given, it is not in the abstract. Rather, the consenting party is permitting a search of his protected zone for a distinct object. The scope of the search then, based on the objective facts, extends to all areas or containers where it would be reasonable to look for the object of the search. This standard, just as in warrant or probable cause searches, will ensure that the government agent's conduct will be subject to detached, neutral, judicial scrutiny for an evaluation of the reasonableness of the search in light of the objective facts.

I. THE SCOPE OF A CONSENT SEARCH EXTENDS TO ALL AREAS, INCLUDING CLOSED CONTAINERS, WHICH COULD REASONABLY CONCEAL THE OBJECT OF THE SEARCH, WHEN THE CONSENTING INDIVIDUAL IS ADVISED AS TO THE NATURE OF THE INVESTIGATION AND THE OBJECT OF THE SEARCH.

A. The Fourth Amendment requires that the scope of a search, whether authorized by warrant, probable cause or consent, be reasonable when viewed by the objective facts which surround the encounter.

The Respondents were told by Officer Trujillo that he wished to search the vehicle because he was looking for illegal drugs. The Respondents' consented. The Florida Supreme Court held that the consent to search their motor vehicle for narcotics did not extend to closed containers found within the passenger compartment. Florida submits that the Respondents' consent did not authorize a search in the abstract. Rather, the Respondents authorized a search for illegal drugs.

The determination if the search or seizure is reasonable is a two prong inquiry. *Terry v. Ohio,* 392 U.S. 1, 20-21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Since the valid consent[1] lawfully placed Officer Trujillo in the passenger compartment of the car, to search for illegal drugs, his search of the rolled up brown paper bag placed on the floor of the car was reasonably related in scope to the consent search. These parameters are as reasonable as the scope of a warrant or probable cause search under similar circumstances. The valid consent is no different than probable cause, inasmuch as both lawfully place the police in a protected area. Informing the individual of the area and object of the search serves as the particularity requirement of the warrant, inasmuch as both specifically describe the place, persons or things to be searched or seized.

The Florida Supreme Court's approach takes the abstract position by which consent to search a vehicle for illegal drugs extends to the vehicle alone. Any containers uncovered by the search are not within the scope of the consent. This is contrary to this Court's Fourth Amendment analysis.

The Fourth Amendment's Warrant Clause prohibits the issuance of any warrant, except one "particularly describing the place to be searched and the persons or things to be seized." The particularity requirement was incorporated to prevent general searches. A general search can not occur when the authorization is limited to specific areas and things for which there is probable cause to search. *Maryland v. Garrison,* 480 U.S. 79, 80, 107 S.Ct. 1013, 94 L.Ed.2d 72 (1987). The Fourth Amendment assures, not that the citi-

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1 The first prong of the inquiry, whether the officer's action was justified at its inception, is not at issue. However, a voluntary consent lawfully places the police in the area, and gives the police no broader or narrower rights within the area than that permissible in a warrant or probable cause search.

zens are free from all searches, but only that no search will occur that is unreasonable. *Illinois v. Rodriguez,* 497 U.S. ___, 110 S.Ct. ___, 111 L.Ed.2d 148 (1990). In determining if the seizure and search were unreasonable, the inquiry is twofold: first, was the officer's action justified at its inception; and second, was the search reasonably related in scope to the circumstances which initially justified the interference.[2] *Terry v. Ohio, supra* 392 U.S. at 20-21. In reviewing all Fourth Amendment intrusions, the scope of the particular intrusion, in light of all the exigencies of the case, is the central element in the analysis of reasonableness. *Id.* 392 U.S. at 18 n.14. The determination must be made, based on the objective factors, that the scope of the search was strictly tied to and justified by the circumstances which rendered its initiation permissible. *Id.* 392 U.S. at 19. If the scope of the search exceeds that permitted by the terms of a valid warrant or the character of the relevant exception from the warrant requirement, the subsequent seizure is, without more, unconstitutional. *Horton v. California,* 495 U.S. ___, 110 S.Ct. ___, 110 L.Ed.2d 112, 125 (1990).

The foregoing are the established principles for determining the scope of a search under warrant. As the Court has noted in *Ross:*

> A lawful search of fixed premises generally extends to the entire area in which the object of the search may be found and is not limited by the possibility that separate acts of entry or opening may be required to complete the search. Thus, a warrant that authorizes an officer to search a home for illegal weapons also provides authority to open closets, chests, drawers, and containers in which the weapon might be found. A warrant to open a footlocker to search for marihuana would also authorize the opening of packages found inside. A warrant to search a vehicle would support a search of every part of the vehicle that might contain the object of the search. When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between closets, drawers, and containers, in the case of a home, or between glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

United States v. Ross, 456 U.S. 798, 820-824, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982). (Footnotes omitted).

This Court in *Ross,* also established that the scope of a warrantless search based on probable cause is exactly the same as that of a search authorized by warrant. *Id.* 456 U.S. at 823.

> The scope of a warrantless search of an automobile thus is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found. Just as probable cause to believe that a stolen lawn mower may be found in a garage will not support a warrant to search an upstairs bedroom, probable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase. Probable cause to believe that a container placed

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2 Since the voluntariness of the consent is not at issue herein, only the second prong of the inquiry will be dealt with.

> in the trunk of a taxi contains contraband or evidence does not justify a search of the entire cab.

Id. 456 U.S. at 824.

To be valid under the Fourth Amendment, the scope of the search must be limited by the terms of its authorization. A search by warrant is limited to places and objects, where the specifically described evidence might be found. A warrantless search pursuant to probable cause also extends to all areas or objects, where there is probable cause to believe the object of the search might reasonably be found. Florida submits that the same principles that apply to all other probable cause Fourth Amendment searches, should apply to consent searches, to wit: the scope of the search is defined by the terms of its authorization, which in turn is to be determined by the reasonableness of the search in light of the objective facts.

As the Court has noted, "[t]he actual conduct of the [consent] search may be precisely the same as if the police had obtained a warrant." *Schneckloth v. Bustamonte,* 412 U.S. 218, 243, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). As stated in another context:

> When an official search is properly authorized—whether by consent or by the issuance of a valid warrant—the scope of the search is limited by the terms of its authorization. Consent to search a garage would not implicitly authorize a search of an adjoining house; a warrant to search for a stolen refrigerator would not authorize the opening of desk drawers. Because "indiscriminate searches and seizures conducted under the authority of 'general warrants' were the immediate evils that motivated the framing and adoption of the Fourth Amendment," *Payton v. New York,* 445 U.S. 573, 583, 63 L.Ed.2d 639, 100 S.Ct. 1371, that

> Amendment requires that the scope of every authorized search be particularly described.

Walter v. United States, 447 U.S. 649, 656-657, 100 S.Ct. 2395, 65 L.Ed.2d 410 (1980). (Footnotes omitted).

In *Schneckloth* and *Walter*, this Court has implicitly found that the scope of a consent search is defined by the terms of its authorization; what remains undecided is how to interpret the authorization. Florida submits that the terms of a consent search authorization should be determined by what a police officer could reasonably interpret the consent to encompass. This rule of law would permit the necessary, neutral, judicial scrutiny of the objective facts.

> . . . The scheme of the Fourth Amendment becomes meaningful only when it is assured at some point the conduct of those charged with enforcing the laws can be subjected to the more detached, neutral scrutiny of a judge who must evaluate the reasonableness of a particular search or seizure in light of the circumstances. And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search "warrant a man of reasonable caution in the belief" that the action taken was appropriate.

Terry v. Ohio, supra, 392 U.S. at 21-22, (Footnote omited). *See also Scott v. United States,* 436 U.S. 128, 137, 98 S.Ct. 1717, 56 L.Ed.2d 168 (1978).

Under this standard, the objective facts used to determine the limits of the authorization would be dependent upon what the individual was told of the nature of the search. The police officer, by telling the individual the area he wished to search and the object he was looking for, has defined the

required particularity necessary to avoid a general search. The reasonableness of the search can then be determined if the area that was searched could have contained the object of the search. The search could, especially if consent is given to search for narcotics, reasonably extend to closed containers, locked or unlocked. This is reasonable since, "[c]ontraband goods rarely are strewn across the trunk or floor of a car; since by their very nature such goods must be withheld from public view, they rarely can be placed in an automobile unless they are enclosed within some form of container." *United States v. Ross, supra* 456 U.S. at 820.

The Supreme Court of Florida has held that the consent to search the motor vehicle for narcotics extends only to a visual viewing of the passenger compartment and not to the actual contents located therein. In effect, the court has turned the search of the vehicle for narcotics into a game of "Mother may I," in which the police would have to ask for new permission to search each item that could reasonably contain the illegal drugs. This imposes an unrealistic restriction on a police officer's ability to make a search that is reasonably targeted, within the confines of his authority — here, consent to search the car — to uncover the object of the search, illegal drugs.

CONCLUSION

For the foregoing reasons, the decision of the Florida Supreme Court should be reversed and the cause remanded to the Florida Courts for further proceedings.

Respectfully submitted,

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